

REMARKS

In the Office Action, claims 1-29 were rejected. By the present Response, claims 1, 2 and 6 are amended to correct clerical errors not related to patentability. Upon entry of the amendments, claims 1-29 will remain pending in the present patent application. Reconsideration and allowance of all pending claims are requested.

Rejections Under 35 U.S.C. § 102

The Examiner has rejected claims 1-5, 9-22, 27, and 29 under 35 U.S.C. § 102(b) as being anticipated by DE 101 50 364, (the Kohls reference). Likewise, the Examiner has rejected claims 1, 6-8, 23-26, and 28 under 35 U.S.C. § 102(e) as being anticipated by US 20030144699 (the Freeman reference). A *prima facie* case of anticipation under 35 U.S.C. § 102 requires a showing that each limitation of a claim is found in a single reference, practice or device. *In re Donohue*, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985). In view of the deficiencies of both the Kohl reference and the Freeman reference, the Applicant respectfully traverses these rejections.

Rejections under 35 U.S.C. § 102(b) in view of the German Kohls reference

Prior to addressing the substance of the cited references, Applicant respectfully asserts that the Examiner must provide a translation of the Kohls reference if it is to be relied upon as support for a rejection of the instant claims. In particular, the Kohls reference must be considered as a whole, and such consideration is not possible absent a complete translation. If the relied-upon document is in a language other than English, the M.P.E.P. mandates that “a translation must be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection.” M.P.E.P. § 706.02, II (emphasis added). Moreover, the Board of Patent Appeals and Interferences has stated that “[i]f a translation is not provided by the examiner, the applicant may wish to consider seeking supervisory relief by the way of a petition (37 C.F.R. § 1.181) to have the examiner directed to obtain and supply a translation.” See *Ex parte Jones*, 62 USPQ2d 1206, 1208-09

(Bd. Pat. App. & Inter. 2001) (unpublished) (emphasis added). Accordingly, if the Examiner wishes to employ the Kohls reference as prior art against the instant application, Applicant respectfully requests that the Examiner provide an English translation of the Kohls reference and cite specific passages of the translated reference as mandated by the M.P.E.P.

In this instance, in lieu of a translation of the Kohl reference, the Examiner has merely cited to U.S. Patent No. 6,520,910 (hereinafter the ‘910 patent), stating that the ‘910 patent “is a US equivalent of German Patent (DE 10150 364).” Office Action, p. 6. While the Applicant recognizes that the Kohls reference does claim priority to the application from which the ‘910 patent issued, such a priority claim does not necessitate the “equivalence” the Examiner asserts. Indeed, as the Examiner will appreciate, the text of either or both of the Kohls reference and the ‘910 patent may have been amended during prosecution so that they no longer correspond in their filed forms. Indeed, such discrepancies do appear to exist between the two documents. For example, a paragraph corresponding to paragraph 31 of the Kohls reference appears to be entirely absent from the ‘910 patent. Furthermore, other discrepancies appear to exist between paragraphs 28-30 of the Kohls reference such that their direct correspondence between these paragraphs and the ‘910 patent is unclear at best. These paragraph omissions and discrepancies between the Kohls reference and the ‘910 patent clearly preclude any assertion that the ‘910 patent may be relied upon as a translation. Indeed, absent a suitable translation, neither the Examiner nor the Applicant can be certain of the contents of the Kohl reference. The Applicant must, therefore, insist that the Examiner provide a suitable translation of the Kohl reference if the present rejection is to be maintained. Until such a translation is provided, however, the Applicant will make a good faith effort to address the present rejection with the materials provided by the Examiner in the interest of advancing prosecution.

For example, the Applicant respectfully notes that claim 1 recites: “a data processing component configured to generate a plurality of high resolution symbols....” Such high-resolution symbols, and their generation, are consistently recited in the virtually all of the rejected claims. The high-resolution symbols, however, are entirely absent from the art relied upon by the Examiner.

The recited high-resolution symbols are discussed and explained at length in the detailed description of the application. For example, as noted on page 6 of the application, it is explained that the high-resolution symbols are characters which can be distinguished at high density and/or high-resolution and which are used to convey digital, i.e., binary, information. Such high-resolution symbols may be selected in accordance with their use with high-density, high-resolution printing schemes and/or with two-dimensional barcoding schemes. Application, p. 6, lines 23-25. Because the high-resolution symbols provide binary encoding of data at high-density, i.e., high-resolution, they may be described or defined based on the information density (as may be measured in bytes per square inch of print or other metrics) which they achieve in a particular printed encoding scheme. Application, p. 6, lines 25-27. Furthermore, a simplistic and exemplary illustration of such high-resolution symbols is provided in Fig. 3. In the illustrated example, the high-resolution symbols 38 appear merely as a pattern relative to such low-resolution structures as the ECG waveforms 40 or the depicted alphanumeric characters. Application, Fig. 3. The high-resolution symbols, therefore, provide a printed mechanism for storing binary data at high-resolution and high-density. Application, p. 4, lines 13-15. Such high-resolution symbols are entirely absent from the reference cited by the Examiner, including the Kohls reference.

For example, the Kohls reference, as noted by the Examiner, encodes the physiological data into a *video* format, not into high-resolution symbols. *See* Office Action, p. 3; U.S. Patent No. 6,520,910, col. 3, line 41 to col. 5, line 13 (presumably found in the Kohls reference in paragraph 21-28). In particular, if the ‘901 patent is

assumed to disclose the contents of the cited Kohls reference, the Kohls reference discloses encoding data in accordance with an MPEG or vector graphics algorithm. *See* U.S. Patent No. 6,520,910, col. 3, line 41 to col. 5, line 13. It is unclear why the Examiner equates the recited high-resolution symbols to a video, however, the Applicant vigorously traverses such a strained equivalence.

Furthermore, claim 1 also recites “a printing component configured to *print* at least the plurality of high-resolution symbols... .” (Emphasis added). With regard to this element the Examiner appears to rely solely upon a reference to a “printed page” presumably found in the Kohls reference and seen in the ‘910 patent at col. 4, line 28. These two words, however, in no way fully disclose a printing component configured to print *high-resolution symbols*, as provided in claim 1. As such high-resolution symbols are entirely absent from the Kohls reference (or at least the ‘910 patent), a printing component configured to print such high-resolution symbols is also absent. The Applicant respectfully reminds the Examiner that a single reference must disclose each limitation of a claim to be anticipatory.

As the Kohls reference does not disclose the generation and printing of high-resolution symbols, it also does not disclose a data processing component for generating such symbols or a printing component for printing them. Therefore, no *prima facie* case of anticipation can exist with regard to claim 1 or its dependents based on the Kohls reference. Reconsideration and withdrawal of the present rejection with regard to claim 1 and its dependents is, therefore, respectfully requested.

Similarly, claims 9, 13, and 17 recite pluralities or sets of high-resolution symbols, either in a printed or printable form. As noted with regard to claim 1, such printed or printable high-resolution symbols are absent from the Kohls reference. Therefore, no *prima facie* case of anticipation exists with regard to claims 9, 13 and 17 or

to their dependents. Reconsideration and withdrawal of the present rejection with regard to claims 9, 13, and 17 and their dependents is, therefore, respectfully requested.

With regard to claim 19, the recited method is believed to be entirely absent from the cited Kohl reference. In particular, even if the Kohls reference were to be mistakenly construed as disclosing high-resolution symbols, the Kohls reference still does not disclose the recited steps. For example, the Kohls reference does not disclose “acquiring a set of high-resolution symbols from a printed medium” or of “converting the set of high-resolution symbols to a set of physiological data,” as clearly recited in claim 19.

Indeed, the Examiner provides *no* indication of where these steps may be found in the Kohls reference, and instead improperly aggregates claim 19 with the analysis of claim 1. However, even if the Examiner’s equation of high-resolution symbols with a video were to be accepted, the Kohls reference still does not disclose the non-sensical step of acquiring a video from a printed medium or the step of converting a video to a set of physiological data. In particular, even a cursory review of the Kohls reference, however, demonstrates the absence of the recited steps of claim 19 from the teachings of the Kohl reference. Therefore, if the Examiner wishes to maintain this rejection, the Applicant respectfully requests that the Examiner provide a specific rejection of claim 19 which sets forth the specific passages of the Kohls reference relied upon by the Examiner, as required by 37 C.F.R. § 1.104(c)(2). Absent a showing of the recited steps of claim 19 in the Kohls reference, however, no *prima facie* case of anticipation exists with regard to claim 19 or to its dependents. Reconsideration and withdrawal of the present rejection with regard to claim 19 and its dependents is, therefore, respectfully requested.

Likewise, the Applicant respectfully notes that claims 27 and 29, which were rejected under 35 U.S.C. § 102(b) in view of the Kohls reference, are written so as to include means-for language, as set forth in 35 U.S.C. § 112, paragraph 6, and should be examined in accordance with this body of law. With regard to claim 27, for example, two

of the recited means relate to the generation and printing of the high-resolution symbols, as discussed above, which are absent from the Kohls reference. Claim 27, therefore, is believed to be patentable over the Kohls reference for the reasons discussed above.

With regard to claim 29 a waveform *printout* is recited which comprises a suitable medium. The Examiner has equated the recited suitable medium to the storage component 46 of the Kohls reference. However, the storage medium of Kohls is described as a memory which is a component of a workstation 40 (*see* Fig. 1, and U.S. Patent No. 6,520,910, col. 3, lines 10-12 (presumably found in the Kohls reference in paragraph 18)). Such a memory, however, is unusable as a constituent of a waveform printout, as set forth by claim 29, i.e., a memory chip is *not* a suitable medium for a printout. *See* Application, pp.4 and 8. In view of the absence in the Kohls reference of a “means for storing,” as described within the present application, which may be used in conjunction with a suitable medium of a waveform *printout*, claim 29 is believed to be patentable over the Kohls reference. Reconsideration and withdrawal of the present rejections with regard to claims 27 and 29 is, therefore, respectfully requested.

Rejections under 35 U.S.C. § 102(e) in view of the Freeman reference

The Examiner also rejected claim 1 under 35 U.S.C. § 102(e) as anticipated by the Freeman reference. The Freeman reference, however, is also deficient with regard to disclosing high-resolution symbols, as discussed above. The Examiner, relies solely on paragraph 32, lines 9-13 as disclosing the generation of high-resolution symbols, but this passage is entirely silent as to the use of such high-resolution symbols. Instead the recited passage merely notes that output digital data from a modulator/demodulator 134 may command an I/O device to indicate when resuscitation is unnecessary. There is no indication that this process utilizes high-resolution symbols, or any other printed indicators, since the possible I/O device 120 includes displays and speakers. Freeman, paragraph 32, lines 3-5 and paragraph 32, lines 9-13. Indeed, the use of such high-resolution symbols in the system of Freeman is unlikely since high-resolution symbols, as

discussed above, are printed at high-resolution and high-density. Because the Freeman reference is silent as to the generation of high-resolution symbols, it is also silent as to a printing component configured to print such symbols. In view of these deficiencies, claim 1, as well as those claims depending therefrom, is believed to be patentable over the Freeman reference. Reconsideration and allowance of claim 1 and its dependents is, therefore, respectfully requested.

The Examiner also rejected claim 23 as anticipated by the Freeman reference under 35 U.S.C. § 102(e). Claim 23, however, recites the high-resolution symbols, as discussed above, which are entirely absent from the Freeman reference. In particular, the Freeman reference is entirely silent as to a routine for acquiring a set of high-resolution symbols. In attempting to show this step, the Examiner relies upon paragraph 76, lines 10-14. This passage, however, does not disclose the use of high-resolution symbols.

Similarly, claim 23 recites a routine for converting a set of high-resolution symbols to a set of physiological data. This step is also absent from the Freeman reference as none of the passages cited by the Examiner disclose the use of high-resolution symbols. Furthermore, the passages cited by the Examiner are not necessarily on point. For example, the Examiner relies on paragraph 27 of the Freeman reference, however, this passage clearly describe the acquisition of physiological data from *sensors*, not from the conversion, by a routine, of high-resolution symbols to the physiological data. Similarly, the Examiner relies on paragraph 32 of the Freeman reference, however, this paragraph merely discusses the display of parameters stored as digital data in a *computer memory* (see paragraph 21). It is clear from the paragraph 21 of the Freeman reference that the computer memory 108 is not contemplated as being a printed medium, as recited in claim 23. In an apparent attempt to address this deficiency, the Examiner references paragraph 76, presumably to equate the memory 108, referenced in paragraph 32, with the “computer-readable medium” of paragraphs 75 and 76. This attempt is misplaced, however, in that paragraph 21 of the Freeman reference describes possible

embodiments of the memory 108 at length, none of which are a paper medium.

Furthermore, Figs 1 and 2 of the Freeman reference clearly depict the memory 108 as a part of the computing device 128, not as a paper medium. While the Freeman reference, in paragraphs 75 and 76, does discuss the use of a computer-readable medium, it is *not* equated to the memory 108 in either paragraph and instead appears to be a proposed mechanism for storing and accessing a computer program, *not* stored physiological data.

See Freeman, paragraph 75, lines 10-14 and paragraph 76, lines 10-16.

While the Applicant respects and appreciates the Examiner's attempt at thoroughness, the disparate passages the Examiner has relied upon in an attempt to demonstrate the presence of the recited routines strongly suggest that the recited routines are not disclosed in the Freeman reference at all, else the Examiner would be able to more easily identify them. Indeed, it is virtually inconceivable that the Freeman reference would disclose what the Examiner suggests as it is directed to physiological data acquisition for use in *real-time* while trying to resuscitate a patient, such as with a defibrillator. *See* Freeman, Abstract, paragraphs 3-5, 32, 33, 52-59, and throughout. Therefore, it is unclear why the Examiner thinks such a reference would disclose routines for acquiring and converting *stored* physiological data, i.e., data stored as high-resolution symbols on a paper medium which must be acquired and converted to view the physiological data. Such an operation is clearly not contemplated by the Freeman reference and it is difficult, if not impossible, to imagine why such functionality would be desirable or disclosed in a resuscitation context where *real-time* feedback is provided to an operator. *See Id.* Nevertheless, it is clear that the Freeman reference is deficient as an anticipatory document with regard to claim 23, as well as to claim 1. In particular, the Freeman reference, as with the Kohls reference, is entirely silent as to the use of high-resolution symbols. Therefore, reconsideration and allowance of claim 23, as well as those claims depending therefrom, is respectfully requested.

Furthermore, the Examiner has also indicated that claim 28 is rejected under 35 U.S.C. § 102(e) as anticipated by the Freeman reference. No rejection can be found for claim 28, however, and none of the text recited by the Examiner corresponds to the language of claim 28. In view of this oversight, the basis for the Examiner's rejection of claim 28 is impossible to respond to. The Applicant, therefore, respectfully requests clarification of the status of claim 28 in the next communication.

Conclusion

In view of the failure of the Examiner to provide a translated copy of the Kohls reference and the demonstrable differences between it and the '910 patent presumably relied upon by the examiner (for example, the absence of a corresponding paragraph 31 in the '910 patent) the Applicant respectfully requests that the Examiner provide a translated copy of the Kohls reference if the present rejection is to be maintained. Furthermore, the Applicant believes that the failure of the Examiner to provide a translation of the Kohls reference and the failure of the Examiner to provide a basis for the presumed rejection of claim 28 preclude the issuance of a final rejection in the next communication. In particular, any rejection of claim 28 will be a new rejection as no rejection is present in the current communication.

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

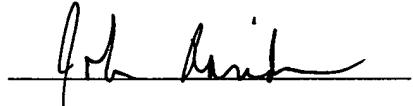
General Authorization for Extensions of Time

In accordance with 37 C.F.R. § 1.136, Applicants hereby provide a general authorization to treat this and any future reply requiring an extension of time as

incorporating a request therefor. Furthermore, Applicant authorizes the Commissioner to charge the appropriate fee as well as any additional fees which may be currently due to Deposit Account No. 50-2401; Order No. 132820IT/YOD (GEMS:0231).

Respectfully submitted,

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